

LAW OFFICES
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
BANK OF AMERICA PLAZA
300 SOUTH FOURTH STREET, SUITE 1201
LAS VEGAS, NEVADA 89101
702-471-7000
FAX: 702-471-7070
WWW.BALLARDSPAHR.COM

✓ FILED - CLERK'S OFFICE
- ENTERED - CLERK'S OFFICE
10/26/2006 10:11 AM
U.S. DISTRICT COURT
CLERK'S OFFICE
LAS VEGAS, NEVADA

PHILADELPHIA, PA
BALTIMORE, MD
BETHESDA, MD
DENVER, CO
PHOENIX, AZ
SALT LAKE CITY, UT
VOORHEES, NJ
WASHINGTON, DC
WILMINGTON, DE

2006 OCT 24 A 11:11

STANLEY W. PARRY
DIRECT DIAL: (702) 387-3083
PERSONAL FAX: (866) 381-5353
E-MAIL: PARRY@BALLARDSPAHR.COM

October 17, 2006

Doc. 63

THE SCO GROUP, INC. v. AUTOZONE, INC.

The Honorable Robert C. Jones
United States District Judge
District Court
333 S. Las Vegas Blvd.
Las Vegas, NV 89101

Re: The Sco Group, Inc. v. AutoZone, Inc. - CV-S-04-0237-RCJ-LRL

Dear Judge Jones:

Pursuant to this Court's August 6, 2004 Order, The SCO Group, Inc. ("SCO") respectfully submits this ninety-day status report to apprise the Court of events occurring since our last update (on July 17, 2006) in certain other actions.

1. The SCO Group, Inc. v. International Business Machines Corporation, Case No. 2:03CV0294 DAK (D. Utah)

Summary Judgment Motions

On September 25, 2006, the court-established date for the parties to file summary judgment motions, the parties submitted the following:

SCO's Motion for Partial Summary Judgment on SCO's Third Cause of Action, For Breach of Contract;

SCO's Motion for Summary Judgment on IBM's Second, Third, Fourth and Fifth Counterclaims;

SCO's Motion for Summary Judgment on IBM's Sixth, Seventh and Eighth Counterclaims;

The Honorable Robert C. Jones
October 17, 2006
Page 2

IBM's Motion for Summary Judgment on Its Claim For Copyright Infringement (IBM's Eighth Counterclaim);

IBM's Motion for Summary Judgment on Its Claim for Declaratory Judgment of Non-Infringement (IBM's Tenth Counterclaim);

IBM's Motion for Summary Judgment on SCO's Contract Claims (SCO's First Second, Third and Fourth Causes of Action);

IBM's Motion for Summary Judgment on SCO's Copyright Claim (SCO's Fifth Cause of Action);

IBM's Motion for Summary Judgment on SCO's Interference Claims (SCO's Seventh, Eighth and Ninth Causes of Action); and

IBM's Motion for Summary Judgment on SCO's Unfair Competition Claim (SCO's Sixth Cause of Action).

IBM's Spoliation of Evidence

Also on September 25, 2006, SCO filed its Motion for Relief for IBM's Spoliation of Evidence. In its supporting memorandum, SCO argues that IBM executives directed the widespread destruction of plainly relevant materials and accordingly asks the Court to impose an adverse-inference instruction against IBM and preclude IBM from contesting that it relied on AIX and Dynix source code in making its contributions to Linux development.

Pending Motions

The parties have fully briefed SCO's objections to Magistrate Judge Wells's order of June 28 granting in part IBM's motion to limit SCO's claims related to allegedly misused materials. Argument on the motion is scheduled for October 24.

The Court has not set a hearing date for IBM's Motion to Confine SCO's Claims to, and Strike Allegations in Excess of, the Final Disclosures, which was fully briefed as of June 26.

Expert Discovery

On August 18, 2006, the parties exchanged rebuttal expert reports and have now taken all noticed expert depositions.

The Honorable Robert C. Jones
October 17, 2006
Page 3

2. The SCO Group, Inc. v. Novell, Inc., Case No. 2:04CV00139 (D. Utah)

On August 21, 2006, the Court issued an Order denying in part and granting in part Novell's Motion to Stay Claims Raising Issues Subject to Arbitration. The Court stayed "the portions of claims relating to SuSE" pending arbitration, but ordered that "claims asserted in relation to the APA and TLA" proceed.

On September 25, 2006, Novell filed its Amended Counterclaims, including two new legal claims based on the allegations that SCO had wrongfully failed to pass through to Novell certain licensing fees. On September 29, Novell filed its Motion for Partial Summary Judgment or Preliminary Injunction based on those allegations. On October 4, SCO filed its Motion for Expedited Stay or Continuance to Respond to Novell's Motion for Partial Summary Judgment or Preliminary Injunction, and to Extend Fact Discovery.

3. Red Hat, Inc. v. The SCO Group, Inc., Case No. 03-772-SLR (D. Del.)

As Your Honor knows, the Court in the Red Hat case has stayed that action sua sponte. Since our last letter to this Court, the parties in that case have submitted additional ninety-day updates to that Court.

Respectfully submitted,

CURRAN & PARRY

Stanley W. Parry, Esq.

SWP:wmj

cc: James Pisanelli, Esq. (via hand-delivery)
David S. Stone, Esq. (via facsimile)